

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION SUB-COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **SUB-COMMITTEE CHAIRMAN SEN. ALVIN ELLIS JR.**,
on January 31, 2001 at 7:10 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)

Members Excused: None.

Members Absent: None.

Staff Present: Linda Ashworth, Committee Secretary
Eddy McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Discussion: SB 111

DISCUSSION ON SB 111

SEN. ALVIN ELLIS explained that SB 111 was a work in progress.
He deemed it appropriate to allow more discussion on SB 111.

SEN. ELLIS indicated the court had given direction concerning the
movement of the bill. **SEN. ELLIS** requested any discussion be
contained to the issues and the proposed amendments.

Channing Hartilius, spoke on behalf of the amendments submitted
by **Rachel Vielleuz**, representing the **County Superintendents**. He
did not feel a change was needed regarding the requirements for
consideration of a land transfer. **EXHIBIT(eds25b01)** **Mr. Hartilius**
submitted amendment **(SB011103.aem)** into testimony,. **Mr.**
Hartilius referred to the "laundry list" on page three and
suggested weighting the factors, which would allow the bill to
pass constitutional muster.

Lance Melton, Montana School Boards Association, explained that **MSBA** developed a resolution that would allow transfers to occur only when the losing district approved it. He reminded the committee that territory transfers, under existing law which was ruled unconstitutional, could only occur when land was contiguous. **Mr. Melton** affirmed the law should be premised on land on which people reside. **Mr. Melton** claimed that county superintendents were in the best position to sort issues and make decisions at the local level. He reasoned the rights and interests of the children, whose territory would be transferred, should be weighed against those remaining in the district.

Lance Melton quoted a suggestion from Mike Dahlam that stated, "A petition shall be granted if a single standard, the educational benefit to the school age children residing in the territory proposed for transfer, would clearly exceed the educational harm to the school age children residing in the remaining territory of the district." **Mr. Melton** maintained "educational harm" could be evidenced by less taxable value to support educational programs in the district.

Rachel Vielleux suggested that the taxable value issue could be addressed by insisting the taxable property would have to be contiguous to the transferred territory.

SEN. ELLIS wondered if the committee should try to restrict transfers or try to reach a judicial balance. **Ms. Vielleux** felt **MSBA** would prefer to restrict transfers. She felt there should be a method for people to move property from one district into another.

REP. DON HEDGES, HD 97 agreed with the proposed changes discussed by **Mr. Hartelius** and modified by **MSBA**. He asked the committee to consider mitigating property tax differences. He felt that the transferred land in the seceding district should carry any bonded obligation that would exist at the time of the transfer and should be exempt from the bonded obligations of the receiving district.

Emil Newmann, Great Falls, expressed concerns that the board of trustees of the school district, transferring the territory, would have to approve the transfer in writing. He felt this would never happen. He reminded the committee that the Newmann Bench had been granted a transfer but was currently hung up with the decision of the Supreme Court. **SEN. ELLIS** indicated that all three amendments under consideration would strike that provision. **Mr. Newmann** urged the committee to fix the problem.

Eddye McClure asked for a definition of "educational harm".

Lance Melton recounted the Supreme Court decision was based on the recommended guidelines for county superintendents. He instructed that the guidelines must be similar to those given to administrative agencies when adopting rules. He advised the committee that the original bill draft request stated the board that would lose the territory would get to disapprove the transfer and there would have be some element of that decision remaining in the bill. He concluded that option should remain available to the district that would lose the territory. **Mr. Melton** suggested inserting, "the transfer of territory will not (insert language), when combined with the accumulative affect of other transfers of territory out of the district in the previous three years, reduce the taxable value of the district from which it is to be detached by 10% or more from the taxable values, prior to those transfers", into subsection d. He reiterated this would address the cumulative affect of multiple transfers.

Eddye McClure referred to the Supreme Court's opinion that said subsection 6 failed to provide any legislative objective standards.

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SEN. JOHN ELLINGSON suggested that specific criteria should be developed on which the county superintendent could base an opinion to approve or disapprove the land transfer. He felt it would be within the power of the committee and the legislature to determine what the criteria should be. He contended the suggestion from Mr. Dahlum's memo was vague.

Channing Hartilius felt his previous suggestions would solve that problem. He contended the guidelines should be weighted, which would solve the social and cultural make-up of the community. He argued that the term, "educational benefit" should not be listed under the category of general guidelines.

Eddye McClure reasoned the language would help county superintendents, most of whom would not be attorneys. She rationalized the criteria would give them guidance in making a decision. **Lance Melton** believed the suggested guidelines would be setting up an automatic appeal in every case.

SEN. ELLINGSON cited strong disagreement with **Mr. Melton's** statement. **Mr. Melton** maintained the word "shall" would create documented obligation of the county superintendent to address and present substantial evidence to support their finding on every one of the items on the list of criteria.

SEN. ELLINGSON asked **Rachel Vielleux** if the categories, as listed on the amendment (**SB01110e.aem**), would assist her in making her decisions regarding land transfers. **Ms. Vielleux** stated it would not be a burden, since most of the issues had been addressed when determining the Newmann Bench decision.

SEN. ELLINGSON wondered if legislative directives would stimulate appeals. **Ms. Veilleux** claimed she had not made a decision that had not been appealed. She explained it would be a matter of whether the testimony and the facts would substantiate the conclusion.

Lance Melton inferred that his organization would be involved in appeals if the committee mandated consideration of the laundry list of guidelines.

SEN. ELLINGSON queried **Mr. Melton** on the standard of appeal. **Mr. Melton** maintained the decision could be appealed to the district court. The criteria could be referred to as conclusions of law, which would ask the court to determine if the county superintendent were right or wrong.

SEN. ELLINGSON hypothecated that he and **Mr. Melton** had a professional difference of opinion. **SEN. ELLINGSON** felt that the Supreme Court decision asked that guidance be given to the county superintendents on the exercise of the discretion. He maintained **Mr. Melton** was referring to an abuse of discretion standard, which would be a heavy burden to overcome if the county superintendent had documented the proceedings in reference to the different categories.

Lance Melton reported that if the standards were not clarified, there would not be anything in the statute that would refer to abuse of discretion. He suggested the committee insert the language, "the county superintendent's decision should be upheld unless the court finds that they have abused their discretion".

SEN. ELLINGSON argued the Supreme Court had already made that statement. He maintained discretion of abuse would be determined under law that would give proper guidance concerning how that discretion should be exercised.

Channing Hartilius agreed with **SEN. ELLINGSON'S** assessment of the court's decision, stating there were no guidelines to determine how the abuse would apply.

REP. HEDGES believed educational quality could be expanded by adding, "curriculum, programs and resources". **SEN. ELLIS** claimed it would be a matter of serving the needs of the people in the area that would be requesting a land transfer.

Mary Somerfeld, voiced her concerns with the long, expensive task that pertained to her specific case. She was not aware of the effect of the Supreme Court ruling on the status of her case. She wondered if they would have to begin again from square one. She requested language in the bill that would allow them to return to a basic hearing. **SEN. ELLIS** guessed they would have to start over. He articulated the legislature could not provide legislation that would solve individual problems.

Ms. Somerfeld requested an explanation for the 10% value of the transferred property. She expressed her belief that 10% would be unrealistic, stating the value should not be based on what was removed but what would remain in order to maintain the district. **SEN. ELLIS** asserted agreement with **Ms. Somerfeld's** petition.

Ron Laubach, charged that educational benefits could also include the emotional factors involved in being forced to attend a different school. He expanded on problems involved with transportation. **SEN. ELLIS** stated his concerns with public land barriers.

Jim Smeltzer advised the sub-committee that school boards were not qualified to accept or reject land transfers. He requested that language pertaining to that issue be deleted from the bill. **SEN. ELLIS** maintained he would not be inclined to give the sending school district the veto power on the decisions.

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Eddy McClure warned that passage of the bill would not stop a lawsuit. She maintained the guidelines should address the issue of educational benefits. She felt the language should state, "in determining educational benefits you shall consider the following criteria".

SEN. ELLIS wondered why **Ms. McClure** did not think there should be a limit on discretion. **SEN. ELLINGSON** responded that the Supreme Court was directing the legislature to limit the discretion.

SEN. ELLIS maintained the effect on the student should be paramount to any other criteria. Economic effects and social and cultural effects would be less important. **SEN. ELLINGSON** queried whether there would be educational impacts on the students that would remain in the district.

Eddy McClure reminded the members that there had to be some sort of guidelines for the county superintendent. **SEN. ELLINGSON** contended the benefits of the transfer would have to outweigh the negative effects.

SEN. ELLIS instructed that all the proposed amendments had repealed the bill as it was introduced and added new sections.

Eddye McClure explained the introduced sections. She maintained the transfer of land must include taxable land that was contiguous. **SEN. ELLIS** argued that subsection (d) could be eliminated, maintaining that the taxable evaluation of property could drop by 10% without the transfer of property.

SEN. JOHN BOHLINGER felt some consideration should be given to taxable value. **SEN. ELLINGSON** agreed with **SEN. ELLIS'** opinion that a petition should not be restricted from being presented to the county superintendent.

SEN. ELLIS asked for an explanation to the purpose of subsection (f). **SEN. ELLINGSON** surmised it would stop people from repeating the process every year.

SEN. ELLIS recommended the language, "after the effective date of this legislation, a district may not reapply for territory transfer for four years". **SEN. ELLINGSON** wondered if the language would deal with the parties in the lawsuit. **SEN. ELLIS** maintained they could file immediately upon passage of the bill. If the parties were to lose, they would have to wait another four years before refiling.

Eddye McClure asserted that the court did not state who would be responsible for the hearing only that proper criteria must be followed. **SEN. ELLIS** expressed his belief in the fairness of allowing local people to go before a local entity.

SEN. ELLINGSON wondered if the transfer should be predominately based on the educational benefit to the children who would be moving. **SEN. ELLIS** debated that primary consideration should be given to the student from the transferred area.

SEN. ELLINGSON indicated that primary consideration should be given to the educational benefits of the transferred students vs. the educational deterrents to the remaining students.

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Eddye McClure interpreted the added language to mean that the advantages would have to outweigh the disadvantages of the transfer. In making the determinations the county superintendent would consider the educational, economic, cultural and social benefits when granting the transfer.

SEN. ELLIS maintained satisfaction with the wording, stating it would eliminate the long laundry list which could result in litigation.

SEN. ELLIS suggested that appeals could be limited to something other than finding of fact. He questioned whether the court would have to accept the findings of facts by the superintendent.

SEN. ELLINGSON interpreted that the district court would have to accept findings of fact if there would be substantial evidence to support the findings. He indicated a district court could always reverse a conclusion of law but not a finding of fact.

SEN. ELLIS questioned if land transfers could pertain to a high school district and not the elementary district. **Ms. McClure** stated she would check existing law as it would pertain to this matter.

Eddye McClure advised the sub-committee that she would compile the proposed amendments and distribute them to the committee members for their perusal, prior to executive action on SB 111.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 15}

EXHIBIT (eds25b02)

ADJOURNMENT

Adjournment: 9:00 P.M.

SEN. ALVIN ELLIS, JR., Chairman

LINDA ASHWORTH, Secretary

AE/LA

EXHIBIT (eds25bad)